IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

MFA.No. 85 of 1996()

OPMV.2072/1992 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, MAVELIKKARA
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APPELLANT

RAVI K.NAIR, S/O. BHASKARAN NAIR,
SARASWATHI VILASOM,
FATHIMAPURAM, CHANGANACHERRY.

BY ADV. SRI.MVS.NAMBOOTHIRY

RESPONDENTS:
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1. **PIUS JOSEPH, ASHA BHAVAN, PERUMTHURUTHY P.O., THIRUVALLA (DELETED)**

2. **NARAYANAN NAIR, ANJALI, THOTTABHAGOM, THIRUVALLA.**

3. **NATIONAL INSURANCE COMPANY LTD., REPRESENTED BY THE BRANCH MANAGER, THIRUVALLA.**

   AS PER THE ORDER DATED 6.10.2005 IN I.A. NO.3005/03 THE FIRST RESPONDENT WAS DELETED FROM THE PARTY ARRAY AND AS PER THE ORDER DATED 11.9.2006 THE SAID ORDER IS REVIEWED AND RECALLED.

BY ADV. SRI.LAL GEORGE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 25/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 85 OF 1996

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Dated this the 25th day of September, 2007

J U D G M E N T

Petitioner in O.P(MV) No.2072 of 1992 on the file of the Motor Accidents Claims Tribunal, Mavelikara is the appellant. Appeal is filed against the award passed by the Tribunal dismissing the claim petition filed by the appellant.

2. Petitioner filed the O.P. claiming compensation on account of the injuries sustained by him in a motor vehicle accident. It was averred that on 11.1.1992 at about 7.45 p.m. he was travelling as a pillion rider in a Scooter in which the first respondent was driving and owned by the second respondent. It was averred that when the vehicle reached the place of occurrence the Scooter hit against a cyclist and capsized. It was alleged that the accident occurred due to the negligence of rider of the Scooter. Owner and driver of the Scooter did not appear and contest. The Insurer alone contested the case. Insurer contended that the petitioner being a gratuitous passenger was not covered by the

insurance policy. It was also contended that there was no negligence on the part of the driver. Tribunal found that the petitioner fully knowing that there was a possibility of an accident chosen to ride the vehicle as a pillion rider and as such he is not entitled to get any compensation. Challenging the said finding of the Tribunal, petitioner himself has filed this appeal. The only question arising for consideration is whether the petitioner is entitled to get any compensation.

3. Owner and driver did not appear before this Court also. Petitioner was a pillion rider and a gratuitous passenger. The Insurer had contended that the policy issued in this case was an act only policy and it is not liable to pay any compensation. The oral evidence of the petitioner himself shows that he asked for a ride. The first respondent was riding the vehicle in a reckless manner. P.W.1 had admitted that he ought to have asked the rider to stop the vehicle but he did not do so. Considering all aspects of the matter, I am of the view that the petitioner alone is to be blamed for the accident. The finding entered by the Tribunal is a finding of fact based on good evidence. So there is no merit in the

appeal and the same is only to be dismissed.

In the result, appeal is dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 85 OF 1996

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J U D G M E N T

25TH SEPTEMBER, 2007